

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY PATENT
LITIGATION

No. 04-MDL-01592

This Document Relates To All Actions.

**UNOPPOSED MOTION FOR LEAVE TO FILE SUPPLEMENTAL
MEMORANDUM OF LAW REGARDING A NEW CASE RESPONSIVE TO THE
COURT'S OCTOBER 4, 2004 ORDER**

Pursuant to Local Rule 7.1(B)(3), Plaintiffs Biogen Idec MA, Inc. and Genzyme Corporation hereby move for leave of the Court to file a Supplemental Memorandum of Law Regarding a New Case Responsive to the Court's October 4, 2004 Order. The proposed Supplemental Memorandum is attached hereto as Exhibit 1. As grounds for this Motion, Plaintiffs state that a recent Federal Circuit decision in *Capo, Inc. v. Dioptics Medical Products, Inc.*, No. 04-1045 (Fed. Cir. Oct. 25, 2004), is responsive to the Court's October 4, 2004 Order requesting that the parties inform the Court of additional caselaw regarding whether a court has discretion to decline to hear declaratory judgment claims. In *Capo*, the Federal Circuit held that a district court abused its discretion when it dismissed a declaratory judgment action.

In addition, Columbia does not oppose the filing of this Supplemental Memorandum.

Dated: November 2, 2004

Respectfully submitted,

/s/ Donald R. Ware

Donald R. Ware (BBO # 516260)

Claire Laporte (BBO # 554979)

Sarah Cooleybeck (BBO # 631161)

Carla Miriam Levy (BBO # 654212)

FOLEY HOAG LLP

155 Seaport Boulevard

Boston, MA 02210-2600

Telephone: (617) 832-1000

Facsimile: (617) 832-7000

Attorneys for BIOGEN IDEC MA INC.
and GENZYME CORPORATION

Certification of Counsel

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for Plaintiffs conferred with each other party and that no party opposes this motion.

/s/ Donald R. Ware

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